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Bonneville Associates, Inc.

JAMES E. FORD
MAR 10 1988
WASHINGTON

M E M O R A N D U M

TO: Bob Miller
FROM: Bob Harris
DATE: March 7, 1988
SUBJECT: Spent Potliner/RCRA Update

We expect the "red border" review of the Report to the Congress on spent potliner to begin within the next week or two. The red border review process is the last phase before the report is put into final form and then submitted to the Congress.

As you are aware, after seeing the initial contractor draft (ICF, Inc.), we redoubled our efforts to convince the EPA (and the Congress) that a flexible regulatory policy outside of the RCRA Subtitle C hazardous waste framework should be promulgated for spent potliners. The two draft reports that we have seen -- the contractor draft and the first draft of the "Report to Congress" -- indicated that spent potliner should be regulated under Subtitle C. Alternatives presented in these two drafts were: "no action" or Subtitle D; full Subtitle C; or, a "C-" regulation, using limited administrative discretionary authority for mining wastes under RCRA Subsection 3004(x).

We are hopeful that the red border review document will be different in that it will assess in more detail the recycling/reuse potential of spent potliner and will call for a fourth regulatory option -- a so-called "D+" regulatory strategy. The July 1986 regulatory determination for mining extraction and beneficiation wastes stated that those wastes would be better regulated under a revised Subtitle D authority, or "D+." We have maintained, both at the Agency and in our congressional contacts, that a D+ framework would be more suitable for a spent potliner regulatory scheme and the recognition in the earlier mine waste determination should be applied in the second report to the Congress.

Our efforts to broaden interest in and concern about EPA's spent potliner position have been successful in that we have generated numerous contacts from Members of Congress to EPA. Letters have been sent to EPA from: Senator Strom Thurmond, Senator John Warner and Representative Newt Gingrich. Last week, I attended a meeting with the staff of Senators Ford and McConnell of Kentucky and they will be sending a joint letter to EPA.

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Alumax also has made contact with numerous other Members of Congress, including Representatives Al Swift, Robin Tallon, Arthur Ravenal and Beverly Byron, and Senators Barbara Mikulski and Paul Sarbanes. Other companies have followed suit and have made similar congressional contacts.

Recently, Representative Bill Emerson (R-MO) has expressed an interest in sending a joint letter, signed by House Members with an aluminum smelter constituency, to EPA. We have begun coordinating that activity with Representative Emerson's staff and will go back to those Members we have already met with encouraging them to join in signing the Emerson letter.

In the state arena, you know Alumax has been successful in generating letters from Governor Campbell in South Carolina and Governor Schaefer in Maryland. We are working on getting a similar letter from Governor Gardner in Washington. During our meeting with Senator Ford's and Senator McConnell's staff, they suggested that we try and get a letter from the Governor of Kentucky as well.

We have continued to work throughout this process with key Members and staff of the Senate and House Committees with legislative jurisdiction informing them of our concerns about EPA's potliner position. This strategy has had a three-fold purpose: first, to generate an understanding among key committee members about the spent potliner issue; secondly, to neutralize potential opposition; and, lastly, to lay the groundwork for potential RCRA legislative initiatives. In this regard, Representatives from Columbia Falls Aluminum have briefed the staff for Senator Max Baucus (D-MT), who chairs the Senate Subcommittee on Hazardous Wastes and Toxic Substances.

CFAE
Alumax
briefed
Baucus
Staff

cc: Peter Aylen

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cc: Peter Aylen